



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

FEB 15 2008

200819020

Uniform Issue List: 408.03-00

T:EP:RA:T3

Legend:

Taxpayer A =  
IRA X =  
Account C =

Account M =  
Account R =  
Financial Institution R =  
Amount A =  
Amount B =  
Provider N =  
State B =  
Date 1 =  
Date 2 =  
Date 3 =  
Financial Representative S =

Dear :

This is in response to your request submitted on your behalf by your authorized representative dated May 8, 2007 and August 24, 2007, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the Code).

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested

Taxpayer A, age 82, represents that he received a distribution of Amount A from IRA X. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to the failure of IRA provider N to advise Taxpayer A of the 60-day rollover requirement.

Taxpayer A, established IRA X with Provider N. Financial Representative S, a representative of Provider N, assisted Taxpayer A in the establishment of IRA X

at IRA Provider N over twenty years ago. Taxpayer A had begun minimum required distributions from IRA X. On Date 1, Taxpayer A informed personnel of Provider N of his intent to close IRA X with the intent to transfer his investment to a financial institution closer to his retirement residence in State B. There was no representation that Taxpayer A spoke to Financial Representative S, with whom he had maintained a relationship for a number of years. Provider N then effected a direct transfer of Amount A into a Provider N non-IRA account, Account C. Approximately four months later on Date 2, Amount A was transferred from Account C to a Bank M account, Account M. Less than a month later on Date 3 Amount B was transferred from Account M to Account R at Financial Institution R in State B.

Taxpayer A asserts that Provider N erred in not informing him that the distribution was taxable unless rolled over into another IRA within 60 days.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60 day rollover requirement with respect to the distribution of Amount A contained in section 408(d)(3) of the Code.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60<sup>th</sup> day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60<sup>th</sup> day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

Taxpayer A has not demonstrated that his inability to complete a timely rollover of Amount A was caused by any of the factors cited in Rev. Proc. 2003-16. Taxpayer A asserts that Provider N's failure to advise him that the distribution would be taxable or that he had rollover options, rises to the level of financial institution error. However, the Code imposes no such obligation on IRA custodians. Absent actions on the part of a financial institution or financial advisor undertaking such an obligation, (e.g. where a taxpayer has erroneously been advised that the rollover period is 90 days), we will not recognize this failure as financial institution error.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby declines to waive the 60-day rollover requirement with respect to the distribution of Amount A from IRA X.

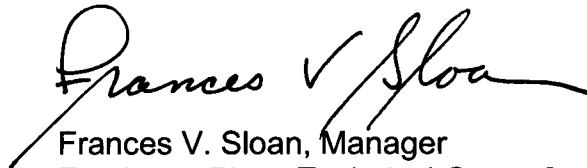
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact  
Please address all correspondence to  
SE:T:EP:RA:T3.

Sincerely yours,



Frances V. Sloan, Manager  
Employee Plans Technical Group 3

Enclosures:  
Deleted copy of letter ruling  
Notice of Intention to Disclose